IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO.2569 OF 2005

Ms Yvette Naik,
sister of the detenu, Ivan Leslie
Pinto, presently undergoing
COFEPOSA Detention at Nasik Road
Jail, Central Prison, Nasik. : Petitioner

V/s.

1. The Principal Secretary (Appeals &
   Security), Home Department,
   Government of Maharashtra &
   the Detaining Authority,
   Mantralaya, Mumbai--400 032.
2. The State of Maharashtra thru the
   Home Secretary, Home Department
   (Special), Govt. of Maharashtra,
   Mantralaya, Mumbai--400 032.
3. Union of India, thru the
   Secretary, Ministry of Finance,
   Department of Revenue,
   The Central Economic Intelligence
   Bureau Government of India,
   Janpath Bhavan, B-Wing, Janpath,
   New Delhi--110 001.

4. The Superintendent of Jail,
Nasik Road Central Prison,
Nasik, Maharashtra. : Respondents

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Mr.Maqsood Khan with Mr.M.M.Patel for the petitioner.
Mr.D.S.Mhaispurkar, Addl. Public Prosecutor for the State.

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CORAM : D.G.DESHPANDE & S.A.BOBDE,JJ.

DATE : JULY 13, 2006.

ORAL JUDGEMENT (Per S.A.Bobde,J.)

1. By this petition, the sister of the detenu (Ivan Leslie Anthony Pinto), challenges the order of detention dated 8.6.2005 passed by respondent No.1 in exercise of the powers conferred by section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, hereinafter referred to as the "Act", with a view to preventing him from smuggling goods and engaging in transporting or concealing or keeping smuggled goods.

2. The detenu was apprehended at Sahar International Airport on 10.3.2005 by the Customs when he was about to depart for Dubai. On search of the detenu's baggage, which according to him belonged to one Ramachandran, Indian currency totalling to Rs.49,73,000/- was found and

seized under a panchanama. The said currency of Rs.49,73,000/- is stated to have recovered from the bag which was carried by the detenu and there was no declaration made in relation to the said currency by the detenu before the Customs Authorities before boarding the aircraft. The detenu came to be arrested on 11.3.2005 which was followed by investigation, including recording of his statements under section 108 of the Customs Act, followed by retraction of the statements. Thereafter, the impugned order of detention came to be passed on 8.6.2005. The order of detention along with the grounds of detention and the documents was served upon the detenu on 22.7.2005.

3. The main contention raised by the learned counsel for the petitioner is that the delay on the part of the State Government in considering and deciding the detenu's representation has resulted in violation of the detenu's rights under Article 22(5) of the Constitution of India.

4. The detenu has made four representations; one to the Members of the Advisory Board, another to the Detaining Authority, third to the State Government, and the fourth to the Central Government. The petitioner stated that the detenu had despatched the representations to the authorities on 31.8.2005. The representations were received by respondent Nos.1 and 2 on 2.9.2005.

Initially, there was some dispute as to whether the detenu had forwarded only one representation for both, the detaining authority and the State Government. This doubt was, however, clarified by the petitioner by producing acknowledgements of both the detaining authority and the State Government and the learned Addl. Public Prosecutor accepts that separate representations were received by the two authorities. To continue, it was argued on behalf of the respondents that the representation was forwarded by the detaining authority to the sponsoring authority on 5.9.2005. The sponsoring authority submitted its comments to the detaining authority which was received on 16.9.2005. Thereafter the representation and the comments of the sponsoring authority were submitted for consideration of the detaining authority which, after considering the same, rejected it on 22.9.2005.

5. The learned counsel for the petitioner submitted that the above delay in considering the representation on the part of the State Government is unjustified since the detenu had submitted his representation separately to the detaining authority and the State Government. According to the learned counsel, therefore, the State Government ought to have considered the representation without waiting for the detaining authority to forward and receive the comments from the sponsoring authority. According to

the petitioner, there is a clear right in the detenu to make a representation to the authorities who are empowered to revoke the detention and the authority who has independent power to revoke the representation need not wait for the other authority to process the representation. It is clear that the learned counsel for the petitioner is correct in submitting that the detenu can make a representation to various authorities who are empowered to revoke the representation.

6. The learned Addl. Public Prosecutor appearing for the respondents, however, pointed out that the two representations in question in this case, viz., to the detaining authority and the State Government were essentially within the domain of the State Government. There is no dispute that the detaining authority functions under the State Government. Therefore, according to the respondents, as a matter of fact, merely because two representations were made separately to the detaining authority and the State Government, it would not have expedited the matter. The learned Addl. Public Prosecutor for the respondents pointed out that there is one file for each detenu and the detaining authority obtains the comments of the sponsoring authority which are placed in the file which is then forwarded to the State Government for decision. In other words, the State

Government cannot independently consider the representation, except by referring to the case papers of the detenu which are contained in one file. According to the respondents, therefore, there is no undue or unreasonable delay in consideration of the detenu's representation by the State Government. This explanation of the State Government appears to be reasonable and justified.

7. Indeed, the State Government could not have decided the detenu's representation without referring to the detenu's case papers which were with the detaining authority who had forwarded them to the sponsoring authority. It is only after the detaining authority having received the comments from the sponsoring authority, forwarded the case papers to the Addl. Chief Secretary (Home) on 26.9.2005 that the Addl. Chief Secretary (Home) considered the representation and eventually rejected the same on 27.9.2005.

8. The learned Addl. Public Prosecutor for the respondents submitted that a similar situation arose earlier and fell for consideration of this Court in Kasim Kadar Kunhi v. State of Maharashtra (2005 All MR (Cri.) 1468. The Division Bench of this Court observed as follows:-

> "In the facts and circumstances of the case, the representation was disposed of within reasonable time. Besides, the material files relating to the detenu were for some time with one of the authorities and undoubtedly the said authority could not have disposed of the representation without perusal of the said records, so also the State Government could not have disposed of the said representation as the said records were with another authority, therefore, the State Government could not be blamed of having delayed the disposal of the representation."

9. We see no reason to take a different view in this case. In the circumstances, we find no reason to set aside the detention order on the only ground advanced before us.

10. In the result, the petition fails. The rule is discharged.

D.G. DESHPANDE, J.

S.A. BOBDE, J.